IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3050 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
ISMAILBHAI A VORA

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Appearance :
MR HARDIK C RAWAL for the petitioner.
RULE SERVED for the respondent.
MR PS PATEL for the respondent.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 18/06/2007

ORAL JUDGMENT

1) The petitioner, State Road Transport Corporation, has invoked Articles 226 and 227 of the Constitution to challenge the award and order dated 14-2-2006 of Labour Court, Nadiad in Reference (LCN) No.217 of 1999, whereby the respondent conductor is awarded

reinstatement with full back wages till the date of retirement and the punishment of dismissal is reduced to stoppage of one increment without permanent effect. There is no dispute about the fact that the respondent was charge-sheeted for serious acts of misconduct of temporary misappropriation and negligence in discharge of his duty. Upon the charges having been held to have been substantially proved at the departmental inquiry in which the respondent did not participate, the respondent had come to be dismissed from service by order dated 11-6-1996 and his first and second departmental appeals were also rejected. Upon his dispute for reinstatement with back wages being referred to the Labour Court and the record of the inquiry along with data of previous defaults being produced in the form of 50 exhibited documents, the Labour Court, in the impugned award, drew a conclusion to the effect that the findings recorded by the inquiry officer were perverse and baseless, even as validity of the enquiry was not challenged by the respondent. Thus, in short, the respondent relied upon undisputed record of the enquiry to convince the Labour Court that the findings of the departmental enquiry were not supported by evidence. A copy of the enquiry report was produced by the petitioner during the course of hearing and it was taken on record.

2) Learned counsel for the petitioner pointed out from the aforesaid report that the respondent had not cooperated in the departmental inquiry and prolonged the proceedings by one or the other excuses, even as his representative was present during the proceeding. And that not only the witnesses supported the case of the management, but the incriminating facts of shortage in cash on 8-8-1994 and the loss of large number of blocks of tickets were not disputed by the respondent. It was believed and held by the Labour Court that the respondent had neither reported nor made any complaint about the loss of large number of

blocks of tickets. Thus, a legitimate inference could be drawn that the blocks of tickets, which were lost, were in fact encashed by the respondent and the money was misappropriated or he was so negligent as not to keep the tickets in his proper custody and not to even report the loss of tickets. Since a conductor holds the position of trust and is entrusted with valuable security, he had to be removed from service for the aforesaid misconduct according to the submission.

3) Learned counsel, Mr.P.S.Patel, appearing for the respondent, submitted that, in any case, the respondent had re-deposited the amount for the missing tickets and that the findings of the inquiry did clearly specify the period for which the respondent was held to be guilty of temporary misappropriation, and that the Labour Court had rightly exercised its discretionary jurisdiction under the provisions of Section 11A of the Industrial Disputes Act, 1947, (for short “the Act”).

4) Having regard to above facts on record and submissions of learned counsel and after perusal of the report of the enquiry and the impugned award, it was fairly clear that inquiry had practically proceeded ex-parte due to non-cooperation of the respondent. That there was no dispute about the main ingredients of the charge of shortfall in cash and loss of blocks of tickets at the hands of the respondent. It was never the case of the respondent that he had ever complained or made a report about loss of blocks of tickets entrusted to him. In such circumstances, dishonesty was writ large on the attitude and approach of the respondent. The provisions of Section 11-A of the Act confers jurisdiction upon Labour Court or Tribunals to set aside the order of discharge or dismissal and direct reinstatement of workman with the precondition of satisfaction that the order of discharge or dismissal was not justified. Therefore, in each case, before exercising the powers under Section 11-A of the Act, it

is necessary for the Labour Court or the Tribunal to record its reasons for reaching to the conclusion that the order of discharge or dismissal was not justified. As held by the Supreme Court in **Regional Manager, U.P. SRTC, Etawah and Others Vs. Hoti Lal and Another (2003) 3 SCC 605**, the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt-with with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable.

5) In the facts of the present case, not only that the findings of the inquiry were not perverse, but the finding of the Labour Court that the finding of the enquiry was perverse and baseless, was itself perverse. The subsequent exercise of powers under Section 11-A of the Act was also without jurisdiction since the Labour Court has not recorded proper reasons for justifying interference with the punishment and the very basis of exercise of jurisdiction, that, the finding of the enquiry was perverse, was incorrect, illegal and perverse. It may be noted here that before the impugned award dated 14th February 2006 was made, the

respondent had already crossed the age of superannuation on 30th June 2003 and hence, the effect of the award was to reward the respondent by approximately Rs.4 Lacs by way of back wages only on the ground that the respondent deserved lesser punishment of stoppage of one increment in the opinion of the Labour Court. In view of the law settled by the Supreme Court in a series of judgments, including the judgment cited hereinabove, it would be a travesty of justice to uphold the impugned award on any technical ground.

6) Therefore, the petition is allowed and the impugned award and order dated 14th February 2006 in Reference (LCN) No.217 of 1999 is set aside. Rule is made absolute with no order as to costs.

(D.H.Waghela, J.)

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